

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Developing a Unified Intercarrier)	
Compensation Regime)	CC Docket No. 01-92
)	

To: The Commission

**COMMENTS OF
UNITED STATES CELLULAR CORPORATION**

James R. Jenkins, Vice President
Legal and External Affairs
United States Cellular Corporation
8110 West Bryn Mawr
Chicago, IL 60631

Michele C. Farquhar
Matthew F. Wood
Hogan & Hartson L.L.P.
555 Thirteenth Street, N.W.
Washington, D.C. 20004-1109
(202) 637-5600

Its Attorneys

May 23, 2005

TABLE OF CONTENTS

	<u>Page</u>
INTRODUCTION AND SUMMARY	1
I. EFFECTIVE INTERCARRIER COMPENSATION REFORM MUST ENABLE WIRELESS CARRIERS TO BUILD UPON THEIR HISTORY OF INVESTING IN RURAL AMERICA.	2
II. BILL-AND-KEEP IS THE ONLY REGIME THAT PROMOTES THE GOALS OF ECONOMIC EFFICIENCY, COMPETITIVE NEUTRALITY, AND ADMINISTRATIVE SIMPLICITY.	5
III. THE COMMISSION HAS THE LEGAL AUTHORITY TO IMPLEMENT A UNIFIED INTERCARRIER COMPENSATION REGIME, BUT DOES NOT NEED TO ADOPT ANY SINGLE REFORM PROPOSAL “AS IS.”	8
IV. THE WESTERN WIRELESS PROPOSAL, CTIA PRINCIPLES, AND ELEMENTS OF OTHER PROPOSALS SATISFY THE COMMISSION’S GOALS FOR REFORM.....	10
V. OTHER COALITION PROPOSALS DECREASE EFFICIENCY AND PRESERVE OR EXACERBATE UNJUSTIFIABLE AND UNECONOMIC DISTINCTIONS BETWEEN TECHNOLOGIES.....	12
VI. USCC SUPPORTS MAINTAINING EXISTING CMRS POLICIES DURING THE TRANSITION PERIOD TO A UNIFIED BILL- AND-KEEP REGIME AND UNIFIED UNIVERSAL SERVICE SYSTEM.	15
CONCLUSION.....	17

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Developing a Unified Inter-carrier)	
Compensation Regime)	CC Docket No. 01-92
)	

To: The Commission

COMMENTS OF UNITED STATES CELLULAR CORPORATION

United States Cellular Corporation (“USCC”), by its attorneys, hereby submits these comments in response to the Commission’s Further Notice of Proposed Rulemaking (“FNPRM”) in the above-captioned docket. [1/](#)

INTRODUCTION AND SUMMARY

USCC strongly supports the Commission’s efforts to bring comprehensive reform to the existing inter-carrier compensation regimes. [2/](#) As discussed below, USCC urges the Commission to adopt proposals that speed the long-overdue transition from the current complicated and unsustainable inter-carrier compensation regime to a unified “bill-and-keep” system. Such a compensation system will be more economically efficient, will eliminate current regulatory features that distort the competitive marketplace and unfairly confer

[1/](#) Developing a Unified Inter-carrier Compensation Regime, CC Docket No. 01-92, *Further Notice of Proposed Rulemaking*, FCC 05-33 (rel. Mar. 3, 2005) (“FNPRM”).

[2/](#) *Id.* at ¶ 4.

different treatment on similarly situated carriers, and will preserve and enhance competitive choices for consumers in rural areas and other high-cost communities. Finally, USCC offers brief comments on other aspects of the FNPRM, including universal service and CMRS-specific compensation issues.

I. EFFECTIVE INTERCARRIER COMPENSATION REFORM MUST ENABLE WIRELESS CARRIERS TO BUILD UPON THEIR HISTORY OF INVESTING IN RURAL AMERICA.

USCC is an independent, regional wireless company, serving more than 5.1 million customers in twenty-five states, with a service area largely rural in character. As a leading rural wireless carrier, USCC knows firsthand the value of services that wireless carriers provide to high-cost communities and the difficulties inherent in providing these valuable services. Wireless networks are crucial to the economic development of rural America, but wireless carriers that invest in supplying superior, state-of-the-art services in rural areas can only do so with the aid of fair regulatory policies that spur rational investment in technologies and do not distort the market for telecommunications services.

USCC agrees entirely with the Commission's conclusions in the FNPRM that any new approach to intercarrier compensation must promote economic efficiency by encouraging efficient use of, investment in, and competition between telecommunications networks. As the Commission noted, one of its "most important policies is to promote facilities-based competition in the marketplace." [3/](#) To promote real competition, the Commission must fashion rules that will be

[3/](#) *Id.* at ¶ 31 (citations omitted).

competitively and technologically neutral – rules that “accommodate continuing change in the marketplace and do not distort the opportunity for carriers using different and novel technologies to compete for customers.” ^{4/} The FNPRM expressed the Commission’s preference for limited regulatory intervention and rules that are simple to administer, concluding that any remaining distinctions between types of carriers and types of traffic in a unified intercarrier compensation regime “should be based on legitimate economic or technical differences, not artificial regulatory distinctions.” ^{5/} As the tremendous growth in wireless subscribers over the last fifteen years demonstrates, a light regulatory touch that looks to market principles and economic efficiency for guidance is preferable to the imposition of legacy regulations on new technologies and evolving marketplaces.

USCC’s experience in meeting the challenge of serving rural populations confirms the need for a regulatory framework that will subject similar types of traffic to similar rules. Furthermore, USCC believes that the same principles of competitive and technological neutrality so vital to intercarrier compensation reform apply with equal force in the context of universal service. As discussed in prior presentations to the Commission, USCC in no way minimizes the

^{4/} *Id.* at ¶ 33. As the Commission has recognized in other contexts, competition between wireless and wireline carriers creates incentives for carriers to reduce prices, invest in innovative technologies, and enhance flexibility for users of their services. *See Telephone Number Portability, First Report and Order and Further Notice of Proposed Rulemaking*, 11 FCC Rcd 8352, 8437 at ¶ 160 (1996).

^{5/} FNPRM at ¶ 33.

importance of rural wireline service, but feels compelled to reiterate that wireless is a rural service too – a service more and more rural Americans are now demanding.

To ensure that rural Americans enjoy the same service choices and the same kinds of convenience, health and safety, and economic opportunities that are available to residents of more densely populated areas, universal service support must be targeted to those who need it most and must cost no more than necessary to assure affordable end-user rates. Ideally, it should be fully portable between carriers and across platforms. Rural consumers must be able to receive service at reasonable rates, but that does not mean that intercarrier compensation or universal service should be used to guarantee carrier revenues or to prop up inefficient and uneconomic technologies with implicit or explicit subsidies. The Commission can satisfy its mandate to preserve universal service with a fund that bases compensation on forward looking costs and the most efficient technology, and that derives contributions from a fair, revenue-based assessment on a broad range of contributing entities.

In sum, intercarrier compensation reform and the fulfillment of universal service obligations should be consumer-focused, not carrier-focused. USCC believes the Commission must place customers' interests first. Consumer choice and affordable service, not the demands of individual carriers or particular industry segments, should be the public interest mandate for this proceeding. USCC commends the Commission's decision to address the "urgent need to reform

the existing intercarrier compensation rules” [6/](#) and the FNPRM’s “acknowledgment of the need for fundamental change.” [7/](#) In recognition of the facts underlying the rapidly evolving telecommunications market, USCC supports elements of the various industry proposals discussed in the FNPRM that would effect such fundamental change while satisfying the Commission’s stated goals for any unified intercarrier compensation regime.

II. BILL-AND-KEEP IS THE ONLY REGIME THAT PROMOTES THE GOALS OF ECONOMIC EFFICIENCY, COMPETITIVE NEUTRALITY, AND ADMINISTRATIVE SIMPLICITY.

USCC believes that the Commission’s proposals regarding a “bill-and-keep” intercarrier compensation regime, as explained in the 2001 Notice of Proposed Rulemaking (the “First Notice”) that initiated this proceeding and as further developed in the Staff Analysis (Appendix C to the FNPRM), constitute the correct approach. [8/](#) The more recent reform proposals and principles advanced by Western Wireless and CTIA, and set out for comment in the FNPRM, [9/](#) make clear that a bill-and-keep approach encourages efficiency and fosters competition by promoting carrier self-reliance for recovery of costs and reduces the possibility of regulatory arbitrage and resulting inefficient investment.

[6/](#) *Id.* at ¶ 37.

[7/](#) *Id.* at ¶ 60.

[8/](#) See Developing a Unified Intercarrier Compensation Regime, *Notice of Proposed Rulemaking*, 16 FCC Rcd 9610 (2001) (“First Notice”); FNPRM, App. C.

[9/](#) See FNPRM at ¶¶ 54 – 55, 59.

Bill-and-keep readily satisfies the Commission's stated goals for a unified intercarrier compensation regime by adhering more closely to the principle of competitive and technological neutrality than any of the other proposals advanced. Bill-and-keep also provides the greatest amount of regulatory certainty with minimal regulatory intervention and administrative oversight. A bill-and-keep solution also accommodates the creation and implementation of a fair, unified universal service high-cost support mechanism that will engender full intermodal competition for the ultimate benefit of consumers in high-cost areas, who desire both affordable services and real choice in service providers.

The FNPRM notes that some parties still cling to the Commission's conclusion in 1996 – some five years before the Commission issued the Notice that opened this proceeding and catalogued the many potential benefits of bill-and-keep in the intercarrier compensation context – that bill-and-keep arrangements are not economically efficient so long as the costs of terminating traffic are positive. ^{10/} The validity of the Commission's 1996 conclusion in that separate proceeding is not at issue here, but commenters' contention that “the record fails to support a departure” from these previous conclusions ignores the evidence cited in the FNPRM itself, as well as the analysis set forth even more clearly in the Staff Report. As the Commission noted in the FNPRM, the telecommunications marketplace has

^{10/} *Id.* at ¶ 38, n.112 (citing Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 and Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers, *First Report and Order*, 11 FCC Rcd 15499, 16055, at ¶ 112 (1996)).

undergone dramatic changes since the Commission adopted the existing, multi-layered intercarrier compensation regimes. Consumers' ability in 2005 to manage their own telecommunications services far outstrips the flexibility that was available to end-users in 1996, and therefore "undermine[s] the premise that the calling party is the sole cost causer and should be responsible for all the costs of a call." ^{11/} In the modern telecommunications marketplace, both residential and business customers obviously can and do benefit from receiving calls, as evidenced by the fact that these customers pay for services that enhance their ability to manage incoming traffic. ^{12/} Moreover, the explosive growth in wireless service and the resultant increase in competition indicate that traffic flows between carriers will tend to become more balanced, as end-users begin to conceive of wireless and wireline services as complementary and ready substitutes for one another.

Bill-and-keep presents the Commission with by far the simplest, most easily administrable unified intercarrier compensation regime. Unlike other reform proposals, a bill-and-keep approach decreases the complexity of the intercarrier compensation process. With minimal regulatory intervention and minimal Commission supervision, and without the need to incur administrative expenses for cost studies and extensive negotiations, bill-and-keep allows each carrier in a competitive market to recover costs fairly and flexibly from its own end-users. USCC recognizes the need for a smooth transition from the current, complicated yet

^{11/} *Id.* at ¶ 17.

^{12/} *Id.* at ¶¶ 25 – 26.

easily abused calling party's network pays ("CPNP") principles that underlie the intercarrier compensation regimes developed over the course of the past decade, but that transition should be as short and focused as possible on a speedy changeover to a more efficient and competitively neutral solution. Bill-and-keep provides that solution, and yet allows the Commission to fulfill its obligation to ensure affordable universal service – a priority shared by the rural wireless and wireline carriers that provide dynamic telecommunications services to millions of customers in rural America.

III. THE COMMISSION HAS THE LEGAL AUTHORITY TO IMPLEMENT A UNIFIED INTERCARRIER COMPENSATION REGIME, BUT DOES NOT NEED TO ADOPT ANY SINGLE REFORM PROPOSAL "AS IS."

USCC realizes that implementation of a unified intercarrier compensation regime implicates jurisdictional questions regarding the Commission's authority to adopt comprehensive reforms. Taking no position on whether cooperation with state regulators or preemption of inconsistent state laws is the better approach, USCC concurs with the jurisdictional arguments and positions outlined in Western Wireless's proposal. ^{13/} All intercarrier compensation is subject to the reciprocal compensation mandate in Section 251(b)(5) of the Communications Act. ^{14/} Moreover, the requirement to determine "just and reasonable" rates for reciprocal compensation pricing, pursuant to Section 252(d)(2), permits the Commission and state regulatory bodies to adopt a bill-and-keep

^{13/} See Western Wireless Intercarrier Compensation Reform Plan, CC Docket No. 01-92 (filed Dec. 1, 2004) ("Western Wireless Proposal").

^{14/} 47 U.S.C. § 251(b)(5).

methodology. ^{15/} More generally, the Commission has authority under Section 201 to ensure the reasonableness of all common carrier charges and practices, and additional authority under Section 332 to oversee the terms for interconnection with wireless carriers. ^{16/} In sum, the Commission has the power to set standards and default rules governing interconnection rates and resulting network architecture.

That the Commission has this authority to adopt a unified intercarrier compensation regime does not mean that it must adopt any single, industry group-sponsored proposal wholesale, without modifications or improvements that the Commission may wish to make. The Commission's goal throughout this proceeding has been to fashion the best reform proposal to achieve the goals articulated in the FNPRM, in furtherance of the broader public interest, while acknowledging the obvious effort and hard work that went into crafting each of the proposals submitted for comment. As always, the Commission's role is not to arbitrate among industry groups, forge compromises, or seek a political consensus that will never emerge, especially among disparate groups with disparate self-interests. The Commission should adopt the best plan possible by drawing on the strongest points in the specific proposals advanced, with a clear eye towards promoting economic efficiency, regulatory certainty, and competitive and technological neutrality, while maintaining and broadening universal service as a mechanism for funding affordable service and fostering real choices for customers in high-cost areas.

^{15/} *Id.* § 252(d)(1).

^{16/} *Id.* §§ 201, 332(c).

IV. THE WESTERN WIRELESS PROPOSAL, CTIA PRINCIPLES, AND ELEMENTS OF OTHER PROPOSALS SATISFY THE COMMISSION'S GOALS FOR REFORM.

USCC supports the principles articulated by Western Wireless and CTIA. USCC also supports aspects of the plans put forward by NARUC and NASUCA. The Western Wireless plan presents the Commission with a comprehensive set of reforms designed to create a unified intercarrier compensation regime in line with the Commission's goals, while refining universal service to focus this important program on providing service to consumers rather than revenue guarantees to incumbent carriers. ^{17/} Western Wireless is not unique in recognizing that bill-and-keep is the logical endpoint of any intercarrier compensation reform, as other industry group proposals such as the extensive plan put forward by the Intercarrier Compensation Forum ("ICF") also reduce per-minute termination rates to zero over the course of a longer transition period. ^{18/} The Western Wireless proposal, however, offers a better transition plan, shortening the transition period by two years for most carriers. Western Wireless also embraces the important ideal that universal service funding should be competitively and technologically neutral, with funds that are fully portable and designed to protect consumers and prevent distortion of the telecommunications marketplace.

^{17/} See FNPRM at ¶ 54 – 55; Western Wireless Proposal at 3.

^{18/} FNPRM at ¶ 41.

USCC also agrees with the CTIA statement of principles outlined in the FNPRM. [19/](#) CTIA highlighted the fact that many of the proposals submitted to the Commission did not reflect a balancing of consumer interests with entrenched carrier interests, and did not adequately reflect the concerns of wireless customers and carriers. Like CTIA, USCC supports the creation of a single, unified universal service mechanism that calculates support on a forward-looking basis. As always, this mechanism should level the playing field for competitors using different technologies, and should place the focus on serving customers in a particular geographic area rather than on benefiting certain carriers and technologies, or subsidizing below-market rates in high-cost areas. [20/](#)

Finally, USCC applauds both NARUC and NASUCA for the progressive elements of the principles articulated by these associations. As described in the FNPRM, NARUC contends that intercarrier compensation charges should not discriminate based on the classification, location, or network architecture of the originating carrier and its customers. [21/](#) For the reasons described above, however, USCC cannot agree with any proposal that permits the continuation of a system in which carriers look to each other for compensation rather than a simpler, more efficient bill-and-keep approach. Likewise, USCC

[19/](#) *Id.* at ¶ 59; Letter from Steve Largent, President/CEO, CTIA – The Wireless Association, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 01-92 (filed Nov. 29, 2004) (“CTIA Principles”).

[20/](#) CTIA Principles at 3.

[21/](#) FNPRM at ¶ 57.

commends NASUCA for its statement urging the Commission to reject efforts aimed at guaranteeing current access revenue streams for carriers. As NASUCA notes, revenue assumptions in the absence of demonstrated financial need distort the market and create artificial incentives for customers to migrate to different services. [22/](#)

V. OTHER COALITION PROPOSALS DECREASE EFFICIENCY AND PRESERVE OR EXACERBATE UNJUSTIFIABLE AND UNECONOMIC DISTINCTIONS BETWEEN TECHNOLOGIES.

While there are some points of general agreement between USCC's position and the proposals outlined by ICF and other coalitions participating in this proceeding, USCC is compelled to note the instances where these proposals depart from the Commission's stated reform goals and abandon the principles of efficiency, neutrality, and administrative simplicity. As noted above, ICF agrees that bill-and-keep is the ultimate endpoint of any comprehensive intercarrier compensation reform, but during the excessively lengthy transition period it proposes, neither intercarrier compensation nor universal service funding mechanisms should be used as revenue guarantees or business plan insurance for incumbent rural LECs.

As USCC noted at the outset of these comments, rural wireline service is a vital component of the telecommunications services that rural Americans require, but wireless is a rural service too. In light of that fact, and the need to increase choices for rural consumers, three of ICF's proposals are unacceptable. ICF proposes the creation of two new universal service mechanisms, which demand

[22/](#) *Id.* at ¶ 56.

increased contributions from all wireless carriers while expressly denying the benefits of the funds to the customers of rural wireless carriers. [23/](#) Finally, ICF and others suggest moving universal service contributions and assessments from a revenue-based model to a numbering resources or network connections-based assessment. Such a change would discriminate against wireless carriers by shifting more of the funding burden onto their customers, who are more likely to maintain several wireless numbers on their accounts through the use of flexible family share plans and other innovative wireless offerings.

The Commission recognized in the FNPRM the inherent complexity and non-uniformity of the ICF proposal, which would retain separate and complicated per-minute termination rates for different types of traffic and different carriers during the extended transition to a bill-and-keep system. [24/](#) Other industry group and coalition proposals also fail to decrease administrative complexity and do not respect the competitive neutrality principle. The proposal advanced by Home/PBT also supports a discriminatory, numbering resources-based universal service assessments, [25/](#) and while the CBICC proposal uses forward-looking costs, it does so in a manner that does very little to alleviate the marketplace distortions caused by the current intercarrier compensation

[23/](#) See *id.* at ¶ 43.

[24/](#) *Id.* at ¶ 41, n.124.

[25/](#) *Id.* at ¶¶ 52 – 53.

regime. [26/](#) The ARIC FACTS plan, meanwhile, does nothing but exacerbate the complexity of the current system, calling for increased intervention and new layers of regulation in the form of new rate-setting proceedings. It seeks to regulate newer technologies like older technologies, and thus disregards the demonstrated success of the Commission’s “light touch” with respect to wireless carriers. [27/](#) Moreover, that plan would move intercarrier compensation in precisely the wrong direction, leading to potentially substantial *increases* in the compensation paid by wireless carriers. Similarly, the EPG proposal also would raise wireless carriers’ compensation costs, while explicitly discriminating against wireless carriers and their customers by suggesting “reforms” that would make subsidies available only to carriers that lose access charge revenue – denying that such funds serve as universal service mechanisms that should be fully portable (or at least available) to wireless carriers. EPG’s proposal, like so many of the other proposals advanced by incumbent wireline interests, is too complex and too deeply committed to the preservation of a minute-based compensation formula, despite the Commission’s acknowledgment that minute-based systems are subject to abuse and regulatory arbitrage. [28/](#)

[26/](#) See *id.* at ¶ 51.

[27/](#) See *id.* at ¶¶ 48 – 50.

[28/](#) *Id.* at ¶ 23, n.67; see also *id.* at ¶ 70.

VI. USCC SUPPORTS MAINTAINING EXISTING CMRS POLICIES DURING THE TRANSITION PERIOD TO A UNIFIED BILL-AND-KEEP REGIME AND UNIFIED UNIVERSAL SERVICE SYSTEM.

The FNPRM also sought comment on other issues, including the wisdom and necessity of maintaining CMRS-specific regulations and policies such as the intraMTA rule, and the need to reduce CMRS-LEC transaction costs, as well as ending the rate and route discrimination against CMRS traffic that exists under the current system. USCC supports maintaining the intraMTA rule at least during the transition to a bill-and-keep intercarrier compensation regime. USCC also notes that replacement of this system with legacy wireline interconnection and transport regulations would jeopardize the unique benefits that consumers have already come to enjoy and expect from wireless services – namely, larger calling areas, any-distance plans, and other innovative offerings. Forcing wireless carriers to conform to LEC technological and geographic boundaries in the exchange and termination of local traffic could, paradoxically, lead to exactly the same kind of “rate shock” for rural wireless customers that the Commission seeks to avoid.

USCC believes that reduction of transaction costs in negotiating CMRS-LEC interconnection is sorely needed, and sees some merit in the Commission’s suggestion to establish national or state-based default terms and rates, either by arbitration or pursuant to approved, master agreements. ^{29/} As important to the preservation of a competitive marketplace and a level playing field between wireless and wireline carriers, however, is the curtailment of rating and

^{29/} *Id.* at ¶¶ 139 – 140.

routing abuses that affect wireless carriers' relationship with LECs of all sizes.

USCC supports Sprint's call for the curtailment of the abuses outlined in its petition filed in this proceeding, and urges the Commission to grant expeditiously the declaratory ruling requested by Sprint. [30/](#)

[30/](#) Sprint Petition for Declaratory Ruling, CC Docket No. 01-92 (May 9, 2002).

CONCLUSION

For the foregoing reasons, USCC urges the Commission to act quickly and speed the transition to a unified, bill-and-keep intercarrier compensation regime. Bill-and-keep will promote economic efficiency and facilities-based competition between carriers using different technologies, and will do so with minimal regulatory intervention and oversight in competitive markets. At the same time, the Commission can easily couple a bill-and-keep intercarrier compensation regime with a reformed, fully portable, and consumer-focused universal service mechanism that would ensure continued affordable service and provide more choices for customers in high-cost areas.

Respectfully submitted,

**UNITED STATES
CELLULAR CORPORATION**

By: /s/ James R. Jenkins

James R. Jenkins, Vice President
Legal and External Affairs
United States Cellular Corporation
8110 West Bryn Mawr
Chicago, IL 60631

By: /s/ Michele C. Farquhar

Michele C. Farquhar
Matthew F. Wood
Hogan & Hartson L.L.P.
555 Thirteenth Street, N.W.
Washington, D.C. 20004-1109
(202) 637-5600

Its Attorneys

Dated: May 23, 2005